

Ruling 422-08-1

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A ruling has been requested concerning the applicability of certain provisions of the Gross Receipts and Compensating Tax Act to the following fact situation:

X is regularly engaged in the business of publishing a magazine distributed nationally with less than one percent (1%) of the total circulation being in New Mexico. The magazine generates receipts from subscription sales, sales of the magazine to retailers for subsequent resale and sales of advertising space within the magazine.

The printing of the publication is performed by an independent contractor located outside of New Mexico. Distribution of the magazines occurs through the U.S. Postal Service with the point of origination being outside of New Mexico. Subscription lists are processed and maintained by an independent contractor who is also located outside New Mexico.

X is currently headquartered in New Mexico. All advertising space sold is through sales offices located in New York City, Los Angeles, San Francisco and Boston. No advertising space is sold from an office in New Mexico.

X inquires concerning imposition of the gross receipts tax on receipts from the sale of magazines and from the sale of advertising space.

Section 7-9-63 NMSA 1978 allows a deduction from gross receipts for the receipts from publishing newspapers or magazines, but this deduction does not apply to the receipts from the retail sale of magazines. X may deduct its receipts from selling magazines for resale to distributors, newsstands and retail outlets under the provisions of this section. However, X's receipts from selling magazines at retail in New Mexico are not deductible but are subject to the imposition of the gross receipts tax. X's receipts from the sale of magazines at retail to subscribers who receive the magazines, delivered through the U.S. Mail to an out-of-state address, are receipts from selling property outside of New Mexico and are not gross receipts under the provisions of Section 7-9-3.5 NMSA 1978 and, therefore, are not subject to the gross receipts tax.

The receipts from selling advertising space in a newspaper or magazine published in New Mexico are receipts from selling a service performed in New Mexico and are not deductible under Section 7-9-63 NMSA 1978. However, Section 7-9-48 NMSA 1978 provides a deduction for the receipts from the sale of a service for resale if the buyer of the service provides the seller with the appropriate Nontaxable Transaction Certificate resells the service in the ordinary course of business and the resale is subject to gross receipts tax. This deduction would apply to X's receipts from advertising agencies which resell the advertising space to the advertiser whose receipts are subject to gross receipts tax. If X receives a Nontaxable Transaction Certificate from an advertising agency, X may deduct the receipts from the sale of advertising space to that person.

Section 7-9-57 NMSA 1978 provides a deduction for the receipts from selling a service to an out-of-state buyer if the product of the service is delivered to the buyer outside of New Mexico.

and if the buyer initially uses the product of the service outside of New Mexico. In X's situation, it is difficult to determine where the product of the service is delivered to the buyer when the publications containing the product of the service, the advertisement, are delivered throughout the United States, including New Mexico.

To be deductible under the provisions of Section 7-9-57 NMSA 1978, the product of the service must also be initially used outside of New Mexico. Subsection D of Section 7-9-3 NMSA 1978 defines "initially used" to mean "the first employment for the intended purpose". The intended purpose of the product of X's service is to place a message before the reader of the magazine encouraging the reader to perform an activity, such as purchase a particular product, which is desired by the advertiser. Therefore, the employment for the intended purpose of the product of X's service occurs when the reader reads the advertisement. To be deductible, this reading of the advertisement must occur outside of New Mexico. X's magazines are read by persons both inside and outside of this state. Therefore, determining the location of the occurrence of the first employment for the intended purpose of each of the advertisements in each issue of the magazine is virtually impossible. To ease the administration of the provisions of Section 7-9-57 NMSA 1978, X may deduct from gross receipts the receipts from advertisers with no location in New Mexico an amount equal to the percentage determined by dividing the number of magazines for each issue sold outside of New Mexico by the total number of magazines sold everywhere. X may not deduct any portion of the receipts from advertisers located within New Mexico under this provision.